

RICK D. NYDEGGER  
BRENT P. LORIMER  
THOMAS R. VUKSINICK  
LARRY R. LAYCOCK  
JONATHAN W. RICHARDS  
DAVID R. WRIGHT  
JOHN C. STRINGHAM  
JOHN M. GUYNNE  
CHARLES L. ROBERTS  
DANA L. TANGREN  
ERIC L. MASCHOFF  
CHARLES J. VEVERKA  
ROBYN L. PHILLIPS  
RICHARD C. GILMORE \*  
STERLING A. BRENNAN  
R. BURNS ISRAELSEN  
DAVID R. TODD  
DAVID B. DELLENBACH  
L. DAVID GRIFFIN  
ADRIAN J. LEE  
FRASER D. ROY  
CARL T. REED



# WORKMAN | NYDEGGER

INTELLECTUAL PROPERTY ATTORNEYS

1000 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111  
TELEPHONE: (801) 533-9800  
FAX: (801) 328-1707  
BSITE: [HTTP://WWW.WNLAW.COM](http://www.wnlaw.com)

PATENT APPLICATION  
Docket No: 13447.42

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
                        ) Daniel F. Justin et al. )  
Serial No.:         10/749,332                              ) Art Unit  
                        ) 3732  
Filed:               December 30, 2003                      )  
Confirmation No.: 9889                                      )  
For:                 METHODS AND APPARATUS FOR              )  
                       FORMING A TUNNEL THROUGH A              )  
                       PROXIMAL END OF A TIBIA                      )



R. PARRISH FREEMAN, JR.  
PETER F. MALEN, JR.  
L. REX SEARS, PH.D.  
WILLIAM R. RICHTER  
ERIC M. KAMERATH  
ROBERT E. AYCOCK  
JENS C. JENKINS  
MICHAEL B. DODD  
KEVIN W. STINGER  
WILLIAM J. ATHAY  
RYAN D. BENSON  
SARA D. JONES  
TIGE KELLER  
JANNA L. JENSEN  
MATTHEW D. TODD  
J. LAVAR OLDHAM  
MICHAEL J. FRODSHAM  
JOSEPH L. KRUPA  
BRETT A. HANSEN  
BRETT I. JOHNSON  
MATTHEW A. BARLOW  
WESLEY C. ROSANDER  
ANDREW S. HANSEN  
CHAD E. NYDEGGER  
JOSEPH G. PIA  
CLINTON E. DUKE  
RYAN N. FARR \*  
JAMES B. BELSHE  
KIRK R. HARRIS  
KEELY SCHNEITER  
MICHAEL M. BALLARD  
DAVID A. JONES  
SHANE K. JENSEN  
JONATHAN M. BENNS, PH.

VERNON R. RICE §  
OF COUNSEL

TRANSMITTAL FOR SUPPLEMENTAL INFORMATION  
DISCLOSURE STATEMENT

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing and pursuant to 37 C.F.R. § 1.97 is a Supplemental Information Disclosure Statement, which includes the following statements, if any, required variously by 37 C.F.R. § 1.98:

X Statement of relevance of selected cited references not in the English language which are not translated.

— Statement that selected cited references are substantially cumulative of an enclosed or previously submitted reference.

— Statement that selected cited references were previously cited by or submitted to the United States Patent and Trademark Office in a prior application which is relied upon for an earlier filing date under 35 U.S.C. § 120.

\* Admitted only in California  
§ Admitted only in Virginia

A. Additional Materials Required Due to Content of Information Disclosure Statement

Transmitted are the following documents in addition to the Information Disclosure Statement as required variously under 37 C.F.R. § 1.98:

- Form PTO-1449 listing 17 references submitted for consideration.
- A copy of 10 Non-US references listed on the Form PTO-1449.
- English translations of \_\_\_\_ (\_\_\_\_) of the references listed on the Form PTO-1449 which are not in the English language.
- Copies of the following documents from the prosecution of a previous, related application:
  - Form PTO-1449 AND INFORMATION DISCLOSURE STATEMENT; and
  - Form PTO-892

B. Additional Materials Required Due to Timing of Filing of Information Disclosure Statement

The transmitted Supplemental Information Disclosure Statement is being filed within one (1) of the following four (4) time periods:

- I.  Prior to the later of either three (3) months following the filing date or the mailing of a first Office Action. Accordingly, no materials other than those listed above are enclosed.
- II.  Following the latter of either three (3) months following the filing date or the mailing of a first Office Action, but before the mailing of a final Office Action or a Notice of Allowance. Accordingly, to secure consideration thereof, one (1) of the following is also enclosed:
  - Promptness Certification; or
  - Check No. \_\_\_\_\_ in the amount of \$\_\_\_\_ constituting the submission fee set forth in 37 C.F.R. § 1.17(p).
- III.  After the mailing of a Notice of Allowance, but before payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:
  - Promptness Certificate;
  - Petition for Consideration; and

Check No. in the amount of \$ \_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

IV.  After payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:

Petition to Withdraw from Issue; and

Check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

C. Fees

The Commissioner is hereby authorized to charge payment of or any deficiency in the following fees associated with this communication, or to credit any overpayment thereof, to Deposit Account No. 23-3178. A duplicate copy of this letter is enclosed.

Any fee required in relation to filing of this letter or any documents transmitted therewith.

The submission fee set forth in 37 C.F.R. § 1.17(p) in the event that 37 C.F.R. § 1.97(c) applies and the Examiner is not satisfied that any Promptness Certificate submitted meets the requirements of 37 C.F.R. § 1.97(e).

The submission fee set forth in 37 C.F.R. § 1.17(p).

The petition fee set forth in 37 C.F.R. § 1.17(i)(1).

Dated this 15<sup>th</sup> day of August 2005.

Respectfully submitted,



DANA L. TANGREN  
Attorney for Applicant  
Registration No. 37,246  
Customer No. 022913  
Telephone No. 801.533.9800



PATENT APPLICATION  
Docket No: 13447.42

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of )  
                        )  
                        )

Daniel F. Justin et al. )  
                        )  
                        )

Serial No.: 10/749,332 ) Art Unit  
                        ) 3732

Filed: December 30, 2003 )  
                        )  
                        )

Confirmation No.: 9889 )  
                        )  
                        )

For: METHODS AND APPARATUS FOR FORMING A )  
      TUNNEL THROUGH A PROXIMAL END OF A TIBIA )

CERTIFICATE OF DEPOSIT UNDER 37 C.F.R. § 1.8

I hereby certify that the following documents are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450, on the 15<sup>th</sup> day of August 2005.

- Transmittal for Supplemental Information Disclosure Statement (3 pages)
- Supplemental Information Disclosure Statement (2 pages)
- Form PTO-1449 listing 17 references (2 pages)
- A copy of 10 Non-US references list on the Form PTO-1449
- Postcard

Respectfully submitted,

DANA L. TANGREN  
Attorney for Applicant  
Registration No. 37,246  
Customer No. 022913  
Telephone No. 801.533.9800

DLT:dfw  
W:\13447\42\DFW0000014792V001.DOC



PATENT APPLICATION  
Docket No: 13447.42

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**  
**UNDER 37 C.F.R. § 1.97**

Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Please find, pursuant to 37 C.F.R. § 1.98(a)(1), the enclosed Form PTO-1449 which contains a list of all patents, publications, or other items that have come to the attention of one or more of the individuals designated in 37 C.F.R. § 1.56(c). While no representation is made that these references may be "prior art" within the meaning of that term under 35 U.S.C. §§ 102 or 103, the enclosed listed references are disclosed so as to fully comply with the duty of disclosure set forth in 37 C.F.R. § 1.56.

Moreover, while no representation is made that a specific search of office files or patent office records has been conducted or that no better art exists, the undersigned attorney of record believes that the enclosed art is the closest to the claimed invention (taken in its entirety) of which the undersigned is presently aware, and no art which is closer to the claimed invention (taken in its entirety) has been knowingly withheld.

In accordance with 37 C.F.R. §§ 1.97 and 1.98, a copy of each of the listed references or relevant portion thereof that is not a US Patent document is also enclosed.

Statement of Relevance of References Listed  
Unaccompanied by English Translation  
Under 37 CFR § 1.98(a)(3)

In accordance with 37 CFR § 1.98(a)(3), the following concise explanation of the relevance of each listed reference that is not in the English language and unaccompanied by a translation into English is provided.

French Patent No. FR 2 718 953: The assembly consists of a support designed to receive the articulation plate of the femoral implant, together with anchoring elements in the form of two bushes which can be fixed in holes in the support and equipped with radially expandable lips and a keel plate designed to fit into the medullary canal of the tibia and fixed to the support by a screw passing through a central hole located between the two holes for the bushes. Each of the bushes has at least two lengthwise slots forming the expandable lips, a threaded end for screwing into one of the holes in the support and an inner thread for a locking screw.

French Patent No. FR 2 521 421: This prosthesis essentially has a trochlea element (11) shaped like a sector of a circular ring segment which is fixed in place of and at the site of the damaged trochlea (6) located between the condyles and which presents a circular support surface to the knee-cap (5) of convex longitudinal section and concave cross-section, the sector extending through an arched angle (13) between 60 and 190 DEG, whereas the segment is assymetrical relative to the equatorial plane (12) of the circular ring, such that one of its edges, which corresponds to the lateral edge of the trochlea (6), is further remote from this equatorial plane than the opposite, other edge which corresponds to the medial edge of the trochlea (6).

French Patent No. FR 2 682 589: The present invention relates to a trochlear element (1) for a femoral/knee ball prosthesis, comprising a toric lower part (2) capable of adopting the articular surface of the patella (3), or of a prosthetic patellar disc (3a) replacing this articular surface, the said trochlear element (1) being characterised, on the one hand, in that the said toric lower part (2) is extended upwards by a substantially flat anterosuperior appendage (4) which matches the upper part of the natural trochlea and, on the other hand, in that the said toric lower part (2) is extended, in its equatorial plane, by a tab (5) which is closed upwards to be attached at the top of the intercondyloid notch (6), under the lower face of the femur.

German Patent No. DE 3 917 285: A shoulder prosthesis replaces the condyle (12) of the upper arm bone (10) and the acetabulum of the shoulder blade by a cup (40). The condyle (12) is made of Ti or of a Ti alloy and the element (40) is made of plastic material, pref. RCH100 CHIRULEN (RTM). The part-spherical contact surface (18) of the condyle is matched to the contact face (42) of the acetabulum. The bolt element (16) has a blind hole (26) with a female thread (28) for the bolt (30) with head (32). The opening angle of the surface (42) from the centre of curvature (20) is max. 180 deg. Both elements (12, 14), the bolt (30, 32), the sleeve (34) and the studs (46) are coated with a ceramic bone substitute, pref. hydroxyl apatite. ADVANTAGE - This shoulder prosthesis resembles the Oxford knee prosthesis in its function; it corresponds to the movements of the natural shoulder and simplifies the implantation.

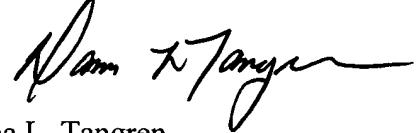
August 15, 2005

Page 3

---

Dated this 15<sup>th</sup> day of August 2005.

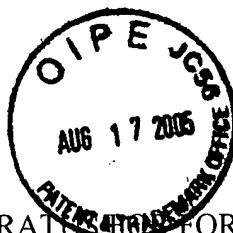
Respectfully submitted,



Dana L. Tangren  
Attorney for Applicant  
Registration No. 37,246  
Customer No. 022913  
Telephone No. 801.533.9800

DLT:dfw  
W:\13447\42\DFW000014792V001.DOC

Applicant: Daniel F. Justin et al.  
 Serial No.: 10/749,332  
 Filing Date: December 30, 2003  
 For: METHODS AND APPARATUS FOR FORMING A TUNNEL THROUGH A PROXIMAL END OF A TIBIA



Sheet 1 of 2  
 Confirmation No.: 9889  
 Att'y Docket No.: 13447.42  
 Art Unit: 3732

### SUPPLEMENTAL INFORMATION DISCLOSURE CITATIONS MADE BY APPLICANT

#### U.S. Patent Documents

Examiner Initial*	Document Number	Issue Date	Name
____ 1	4,224,696	09/30/1980	Murray et al.
____ 2	4,657,549	04/14/1987	Keller
____ 3	5,282,868	02/01/1994	Bahler
____ 4	5,702,397	12/30/1997	Goble et al.
____ 5	6,162,234	12/19/2000	Freedland et al.
____ 6	6,652,587 B2	11/25/2003	Felt et al.
____ 7	2005/0137708 A1	06/23/2005	Clark

#### Foreign Patent Documents

Examiner Initial*	Document Number	Publication Date	Country or Patent Office	Translation
____ 8	0 850 606 A2	07/01/1998	EP	N/A
____ 9	2 682 589	04/23/1993	France	No
____ 10	2 718 953	10/27/1995	France	No
____ 11	2 521 421	11/27/1975	France	No
____ 12	3 917 285	11/29/1990	German	No
____ 13	WO 89/11837	12/14/1989	PCT	N/A
____ 14	WO 91/06260	05/16/1991	PCT	N/A
____ 15	WO 01/28457 A1	04/26/2001	PCT	N/A
____ 16	WO 03/099159 A2	12/04/2003	PCT	N/A
____ 17	2 007 980 A	05/31/1979	United Kingdom	N/A

Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Applicant: Daniel F. Justin et al.

Confirmation No.: 9889

Serial No.: 10/749,332

Att'y Docket No.: 13447.42

Filing Date: December 30, 2003

Art Unit: 3732

For: METHODS AND APPARATUS FOR FORMING A TUNNEL THROUGH A PROXIMAL  
END OF A TIBIA

---

Other Documents

(including author, title, pertinent pages, etc.)

Examiner

Initial\***References Cited by Applicants**

While the filing of Information Disclosure Statements is voluntary, the procedure is governed by the guidelines of Section 609 of the Manual of Patent Examining Procedure and 37 C.F.R. §§ 1.97 and 1.98. To be considered a proper Information Disclosure Statement, Form PTO-1449 shall be accompanied by a copy of each listed patent or publication or other item of information and a translation of the pertinent portions of foreign documents (if an existing translation is readily available to the applicant), an explanation of relevance of each reference not in the English language, and should be submitted in a timely manner as set out in MPEP Sec. 609.

Examiners will consider all citations submitted in conformance with 37 C.F.R. § 1.98 and MPEP Sec. 609 and place their initials adjacent the citations in the spaces provided on this form. Examiners will also initial citations not in conformance with the guidelines which may have been considered. A reference may be considered by the Examiner for any reason whether or not the citation is in full conformance with the guidelines. A line will be drawn through a citation if it is not in conformance with the guidelines AND has not been considered. A copy of the submitted form, as reviewed by the Examiner, will be returned to the applicant with the next communication. The original of the form will be entered into the application file.

Each citation initialed by the Examiner will be printed on the issued patent in the same manner as references cited by the Examiner on Form PTO-892.

The reference designations "A1," "A2," etc. (referring to Applicant's reference 1, Applicant's reference 2, etc.) will be used by the Examiner in the same manner as Examiner's reference designations "A," "B," "C," etc. on Office Action Form PTO-1142.

W:\13447\42\DFW0000014795V001.doc

---

Examiner:

Date Considered:

---

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

---